No. 287

In the Supreme Court of the United States

OCTOBER TERM, 1944

JOHN BARR, PETITIONER

v.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the United States Customs Court (R. 134–142) is reported in 79 Treasury Decisions Advance Sheets, August 12, 1943, p. 14. The opinion of the Court of Customs and Patent Appeals (R. 145–153) is reported at 143 F. (2d) 132.

JURISDICTION

The judgment of the Court of Customs and Patent Appeals was entered on May 22, 1944 (R. 153). The petition for a writ of certiorari was filed on July 26, 1944, and was granted on October 9, 1944. The jurisdiction of this Court is invoked

under Section 195 of the Judicial Code, as amended (28 U. S. C. Sec. 308).

QUESTION PRESENTED

On March 25, 1940, and thereafter, including May 3, 1940, the Federal Reserve Bank of New York, purporting to act under Section 522 (c) of the Tariff Act of 1930, certified daily to the Secretary of the Treasury two buying rates for converting English pounds sterling into United States dollars, one designated as the "free" rate, the other, which was somewhat higher, designated as the "official" rate. The Secretary of the Treasury directed the various collectors of customs to use the "official" rate in converting pounds into dollars for customs duty purposes when the "official" rate varied by more than five per centum from the rate proclaimed by the Secretary under Section 522 (b) of the Tariff Act of 1930. The question presented is:

> Whether the action of the Secretary of the Treasury in directing the collectors of customs to use only the "official" rate was within his authority and not subject to judicial review.

STATUTES INVOLVED

Section 522 of the Tariff Act of 1930, 46 Stat. 739, 31 U. S. C. Sec. 372, reads as follows:

> SEC. 522. CONVERSION OF CURRENCY.
>
> (a) *Value of foreign coin proclaimed by Secretary of Treasury.*—Section 25 of the

Act of August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," as amended, is reenacted without change as follows:

"SEC. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year."

(b) *Proclaimed value basis of conversion.*—For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after the day of the enactment of this Act, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of section 25 of such Act of August 27, 1894, as amended, for the quarter in which the merchandise was exported.

(c) *Market Rate When no Proclamation.*—If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured

by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon on the last preceding business day shall be used. For the purposes of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal Reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange.

The other statutes involved are set forth in Appendix A, *infra*, pp. 43–46, and in the text of the Argument, *infra*, pp. 31–33.

STATEMENT

Coincident with the outbreak of the present war between Great Britain and Germany, the British Government inaugurated an elaborate system for controlling foreign exchange through a series of

orders and regulations which, among other things, required all persons resident in the United Kingdom to sell to the British Treasury at prices fixed by it all foreign currency which they were entitled to sell, and prohibited, with a few exceptions, the exportation of foreign currency from the United Kingdom and the purchase and sale of foreign currency in the United Kingdom from or to any person other than an authorized dealer in such currency, at prices to be fixed by the British Treasury (R. 88–89, 92–120). On March 7, 1940, an Order in Council, effective March 25, 1940, was issued by the British Government wherein it was provided that certain classes of merchandise (not including woolen cloth) might not be exported from the United Kingdom to the United States and several other countries except when payment therefor had been or would be made to persons resident in the United Kingdom in specified currencies, including United States dollars, or in English pounds purchased in the United Kingdom after September 3, 1939, from an authorized dealer in foreign currency[1] (R. 89, 120–123). Authorized dealers sold English pounds only at the rate of $4.035, prescribed by the British Treasury, from January 8, 1940 to the time of the trial of this case (R. 89).

[1] Subsequent to the exportation of the merchandise involved in the case at bar, this Order was amended, effective June 10, 1944, to include merchandise of any class or description (R. 125–126).

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Under date of March 19, 1940, the Federal Reserve Bank of New York notified the Secretary of the Treasury by letter (*infra*, pp. 47–48) that, beginning March 25, 1940, and because of the British order of March 7, 1940, it would certify to the Secretary of the Treasury pursuant to Section 522 (c) of the Tariff Act of 1930, *supra*, pp. 2–4, two rates for the English pound sterling, one to be designated as the "free" rate, and the other as the "official" rate, the latter being the rate fixed by the British Treasury (R. 90, 128–130). On April 15, 1940, the Secretary of the Treasury notified the collectors of customs (T. D. 50134, 75 Treas. Dec. 370–371, 5 Fed. Reg. 1447, *infra*, pp. 49–50) that until further notice he would publish only the "official" rate and directed them to use that rate for the purpose of assessing and collecting duties on imported merchandise whenever it varied by more than five per centum from the value of the gold pound proclaimed by the Secretary under Section 522, (a) of the Tariff Act of 1930, *supra*, p. 3. The value of the gold pound at all pertinent times was determined by proclamation to be $8.2397 (R. 90).

On May 3, 1940, there were exported to the petitioner from England certain woolen fabrics (R. 88), which were imported into the United States at the port of New York on May 13, 1940, where the merchandise was appraised and the duties were ascertained and liquidated. (R. 6–7.)

Payment for the merchandise was made with pounds purchased through the Guaranty Trust Company of New York in the New York market for cable transfer on May 22, 1940, at $3.21 (R. 90). On the date the merchandise was exported from England, the Federal Reserve Bank of New York certified to the Secretary of the Treasury that at noon on that day the "free" rate for the English pound was $3.475138 and the "official" rate was $4.035000 (R. 130–131; *infra*, p. 49). The Secretary, pursuant to his notification of April 15, 1940, to the collectors of customs, published only the "official" rate (T. D. 50146, 75 Treas. Dec. 388, *infra*, pp. 50–51). Since the "official" rate varied by more than five per centum from the proclaimed value of the gold pound for the quarter in which the goods were exported, the collector of customs, as directed by the Secretary, used the "official" rate in converting pounds into dollars for the purpose of assessing and collecting duties upon the value of the woolens. (R. 7.)

The petitioner filed a protest under the provisions of Section 514 of the Tariff Act of 1930, *infra*, p. 44, against the collector's ascertainment and liquidation of the duties (R. 6–7). The protest does not specify the respect in which the collector failed to apply "the buying rate in the New York market at noon on the day of exportation," as it is alleged "should" have been

done, but the protest was sustained as sufficient by the Customs Court (R. 33) after the Government had moved to dismiss (R. 9–10, 11, 23). The Court of Customs and Patent Appeals sustained the sufficiency of the protest under the "liberal construction placed upon protests" under its practice (R. 151). At the trial counsel for the petitioner contended that the collector committed error in converting pounds to dollars at the "official" rate and that he should have used the "free" rate certified by the Federal Reserve Bank for the date in question (R. 38).[2]

The United States Customs Court sustained the protest (R. 143), holding that the Federal Reserve Bank had authority under Section 522 (c) of the Tariff Act to certify both the "official" and the "free" rates; that the action of the Secretary in directing the collectors to use only the "official" rate was beyond the scope of his powers; and that it was the duty of the collector to use the "free" rate for the merchandise involved in the case at bar. (R. 134–142.)

The Court of Customs and Patent Appeals reversed the judgment of the Customs Court (R. 153) because (1) the Secretary's direction to use the "official" rate was binding upon the collector and, since on its face it was valid, was conclusive

[2] There is no controversy concerning the value of the woolen cloth in English pounds or the tariff classification under which the cloth should fall (R. 11, 36).

upon the court as well; and (2) Section 522 (c) contemplates a single buying rate upon a currency, which, in the case of the pound, was the "official" rate since that was "all inclusive." (R. 145–153.)

SUMMARY OF ARGUMENT

I

The court below properly held that Section 522 (c) of the Tariff Act contemplates the finding of only a single buying rate of exchange for use in customs administration. The language of the statute lends no support to the view that more than one rate was contemplated. Petitioner's contention to the contrary, based largely upon the doctrine that the singular may import the plural, ignores the limitation that this principle applies only where it is necessary to carry out the intent of the statute. The purpose of Congress to provide for a single rate of exchange upon each foreign currency in order to facilitate customs administration is evident from the legislative history of Section 522 (c). To hold otherwise would introduce great complexity into customs administration growing out of multiple exchange rates which frequently come into existence with reference to controlled currencies.

II

The British official rate was lawfully certified by the Federal Reserve Bank of New York and lawfully used, pursuant to the instruction issued by

the Secretary of the Treasury, in ascertaining the duties in this case. The official rate was the only rate at which English pounds could be purchased for use for all purposes, including payment for exported goods of all kinds, and consequently was the only single rate that could be employed. The fact that the Bank's certification of this rate was accompanied by the certification of the so-called "free" rate, which the Secretary of the Treasury properly disregarded, did not invalidate the certification of the correct rate. Section 522 (c) does not require that the rate certified be wholly the result of bargaining under all circumstances. A rate employed in actual purchases of exchange in New York City may be certified, even though it results from an official decree. The "free" rate did not evidence the value of the pound, but in reality affected only the price of goods purchased with "free" pounds. The "free" and the "official" rate were not each "tied up with certain classes * * * of merchandise", as contended by petitioner. In point of fact it has not been established that pounds purchased at the "free" rate were used in payment for merchandise to the full extent which was legally possible under the British Order in Council. Even if this were true, it would not follow that the free rate should be used for customs purposes, since the statute requires that duties be assessed upon the value of the goods and not upon their price.

III

In any event, the designation of the "official" rate by the Secretary of the Treasury as the rate to be used was valid and may not be set aside by a court. Two rates in fact existed, as the Federal Reserve Bank certified. This certification confronted the Secretary with a condition in which no statutory buying rate had as yet been determined. He acted properly and within his powers in determining that the "official" rate should be the only one used for customs purposes. His authority stems both from Section 522 (c), which empowers him to publish the rates certified "at such times and to such extent as he deems necessary", and from several sections of the Tariff Act of 1930 and of the Revised Statutes, which authorize him to issue regulations and instructions for the collection of customs and render his instructions binding upon collectors.

Judicial review of the legality of the Secretary's instruction is provided in Section 514 of the Tariff Act; but the scope of this review depends upon the nature and scope of the authority conferred upon the Secretary. The power which he exercised in this case is the general supervisory power of the head of a department with respect to the functions of that department, coupled with the specific discretionary duty of publishing rates of exchange. The decisions of this Court establish that this administrative supervisory power may be exer-

cised to the fullest extent without judicial interference and that a regulation adopted pursuant to it "should not be disregarded or annulled unless * * * it is plainly and palpably inconsistent with law."

Section 522 (c) of the Tariff Act does not limit the authority of the Secretary by subjecting his discretion to that of the Federal Reserve Bank. The Bank is vested with discretion in the sense of skill and judgment in arriving at a technical determination of fact, but the determination of the use to be made of rates of foreign exchange rests with the Secretary. The whole history of rates of exchange in relation to customs administration, and the decisions of this Court with reference to the Secretary's determinations in this field, bear out this view. No decision has ever overturned or gone behind a proclamation of the value of foreign coin or a consular certification of the value of currency under earlier legislation. Without necessarily contending that a court may not look behind the Secretary's proclamation or instruction for evidence of illegality, we think it is clear that nothing whatever entered into the Secretary's determination in this case which attaches the slightest taint of illegality to it. For the Court here "to probe the reasoning which underlies" his action "would amount to a clear invasion of the legislative and executive domains." *United States* v. *Bush & Co.*, 310 U. S. 371, 380.

ARGUMENT

I. THE CERTIFICATION BY THE FEDERAL RESERVE BANK OF NEW YORK OF MORE THAN ONE BUYING RATE FOR A SINGLE CURRENCY IS NOT CONTEMPLATED IN SECTION 522 (c) OF THE TARIFF ACT OF 1930

The court below held (R. 152) that "section 522 (c) * * * contemplates the finding of a single buying rate of exchange. This we think is obvious from a reading of the section."

The foregoing conclusion is clearly correct. The paragraph in question comes into operation if the proclaimed value of a foreign coin "varies by 5 per centum or more from *a value* measured by *the buying rate* in the New York market * * *. For the purposes of this subdivision such buying rate shall be *the buying rate* for cable transfers payable in the foreign currency so to be converted." [Italics supplied.] The language of the statute lends no support to the view that more than one rate was contemplated and that collectors of customs might at various times use both the "official" and the "free" rates for customs purposes.

Petitioner's contention to the contrary (Br. 27–28) is not based upon any considerations relating to the Tariff Act or customs administration but rests largely upon the provision of Section 1 of the Revised Statutes, 1 U. S. C. Sec. 1, that "words importing the singular number may extend and be applied to several persons or things." As

this Court has held, however, "obviously this rule is not one to be applied except where it is necessary to carry out the evident intent of the statute." *First National Bank* v. *Missouri*, 263 U. S. 640, 657. The rule is designed to avoid defeating the legislative purpose because of faulty drafting or literal interpretation, and not to add to the intended meaning of words. In the *First National Bank* case the Court found "nothing in the context or subject matter to require the construction contended for." *Ibid.* Such is also the situation here; indeed, the legislative history of Section 522 (c) points directly to the conclusion that one of the primary purposes of Congress in enacting it was to bring about simplicity and clarity of administration by providing for a single rate of exchange each day upon each foreign currency for tariff act purposes. To hold that more than one rate may be certified and must be considered by the collectors in assessing duties upon numerous importations would defeat this objective.

The language of Section 522 (c) first appeared in the law as Section 403 (c) of the Emergency Tariff Act of 1921, 42 Stat. 9, 17. That Act repealed the previous provisions for determining the value of foreign currency for customs purposes, to be used when the value departed significantly from the value of the corresponding foreign coin. Those provisions were two in number. Section 61

of the Act of March 2, 1799, 1 Stat. 673 (R. S. Sec. 2903) empowered the President to make regulations for the conversion of currency in any case in which the invoice was made out in a depreciated currency. The regulations promulgated to carry out this provision directed that the value of the depreciated currency be determined from a consular certificate. *Customs Regulations* 1874, Article 993. Section 25 of the Act of August 27, 1894, 28 Stat. 552, after continuing previous provisions for determining and proclaiming the value of foreign coin,[3] made the following additional provision relating to depreciated currencies:

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[3] From 1789 to 1873 the values of foreign coins for customs duty purposes were specifically fixed by the Congress. Act of July 31, 1789, Sec. 18, 1 Stat. 41; Act of September 29, 1789, Sec. 3, 1 Stat. 95; Act of August 4, 1790, Sec. 40, 1 Stat. 167; Act of August 4, 1790, Paragraph 2 of Sec. 74 and Sec. 75, 1 Stat. 178; Act of March 3, 1791, 1 Stat. 215; Act of May 2, 1792, Sec. 17, 1 Stat. 262; Act of March 2, 1799, Sec. 61, 1 Stat. 673; Act of March 3, 1801, Secs. 1 and 2, 2 Stat. 121; Act of July 27, 1842, Secs. 1 and 2, 5 Stat. 496; Act of March 3, 1843, 5 Stat. 625; Act of March 3, 1845, 5 Stat. 740; Act of May 22, 1846, 9 Stat. 14; Act of March 2, 1861, 12 Stat. 207. Since 1873 the statutes have provided, subject to the provision made for depreciated currencies, that the value of foreign money for customs duty purposes shall be the pure metal value of foreign coin in United States money as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury. Act of March 3, 1873, 17 Stat. 602, R. S. Secs. 3564, 3565; Act of Oct. 1, 1890, Sec. 52, 26 Stat. 624; Act of Aug. 27, 1894, Sec. 25, *supra*, now incorporated in Sec. 522 (a) Tariff Act of 1930, *supra*, pp. 2–3.

> *Provided*, That the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred.

The procedure required under the provision of 1894, like that under the Act of 1799, depended upon a consular certificate to establish the percentage of depreciation of the currency specified in an invoice as compared with the corresponding standard coin. T. D. No. 23725, 5 Treas. Dec. 396; Consular Regulations (1896), with amendments to 1919, par. 692 as amended May 28, 1914. Reliquidation followed if more than ten percent depreciation was shown. *Customs Regulations* 1915, Art. 621. There was, consequently, no single source, and there was none at all within the United States, to which customs officials could look to determine the value of a depreciated currency. They were required, instead, to look to information obtained from all parts of the globe.

It was to correct this situation and to deal with currency depreciation following the First World War that Section 403 (e) was included in the Emergency Tariff Act of 1921. That provision was inserted by the Senate Finance Committee.

In explanation of its action the Committee reported as follows:

> Under the existing law and executive orders in the case of imported merchandise the United States consuls in the various foreign countries have to certify the value of the currency in which the invoice is made out as of the date of certification. In many cases the consuls fail to make the certification and in such cases it becomes necessary for the importer to pay duty on the gold basis and to ascertain the correct value of the currency, which can only be readjusted in a final reliquidation and is dependent upon the obtaining of a consular certificate.
>
> This frequently results in the assessment of excessive import duties and necessitates a great amount of unnecessary labor on the part of the importer and the Treasury officials in making the proper adjustments in order to refund the excess duties so collected. The present system requires the ascertainment of the value of foreign currency values thousands of miles away from the port of entry. The proposed amendment would permit the ascertainment of the value of foreign currency in the United States, at which point it is readily ascertainable with a greater degree of accuracy. It provides that in cases in which the foreign currency varies by 5 per cent or more from the value measured by the buying rate in the New York market at noon on the

> day of exportation, the conversion shall be made at a value measured by such buying rate. The Federal reserve bank of New York is authorized to determine the buying rate and the proposed amendment provides that the buying rate shall be the buying rate for cable transfers payable in the foreign currency to be converted. The section requires the Federal reserve bank of New York to certify the exchange rates to the Secretary of the Treasury daily and requires the Secretary to make such rates public for the use of the collectors and appraising officers in assessing duties. [S. Rep. 16, 67th Cong., 1st sess., p. 16. The same language was included in the conference report. H. Rep. 79, 67th Cong., 1st sess., p. 12.]

It is clear from the foregoing that the purpose of adopting the present procedure for determining the value of a foreign currency, to be used when that varies to a substantial degree from the value of the corresponding coin, was to provide a simplified, accurate method of making the necessary determination, by substituting as the measure a single rate in a specified market, as ascertained by a competent agent, for the scattered reports previously relied upon. It would run counter to this purpose to a greater extent than appears upon the surface to hold that the singular imports the plural in Section 522 (c) and that it was contemplated that more than one buying

rate would be certified at a time for a single currency for use in customs administration.

The certification here involved, for May 3, 1940, contained two rates for the Canadian and Newfoundland dollars, the Australian pound, the Brazilian milreis, and the Colombian and Uraguayan pesos. (R. 130–131.) Currency controls may produce great complexity in exchange rates.[4] At present, for example, there are four rates in effect for the Argentinian and Chilean pesos and three for the Brazilian cruzeiro. In Argentina, in addition, special rates apply to certain imports from the United States. *Foreign Commerce Weekly* (U. S. Dept. of Commerce), Nov. 18, 1944, p. 33. If, as in the case of the British pound on May 3, 1940, foreign decrees render certain quotations inapplicable to the purchase of exchange in payment for certain classes of exports from the issuing countries, it would be necessary, if all these quotations were recognized, for appraisers in comparing "foreign" and "export" values to determine which is applicable to each value of a given importation (Tariff Act, Sec.

[4] Exchange control "does not represent a uniform system, but one of almost unlimited variety both in its application and in its purposes." League of Nations, *Report on Exchange Control*, p. 23 (1938, Report II. A. 10). This Report of a committee composed of members of the Economic and Financial Committees of the League is an excellent brief factual summary and critique of exchange controls as they developed during the '30's. See also Einzig, *Exchange Control* (London, 1934).

402, *infra*, p. 43), and for collectors of customs in assessing duties[5] to determine which rates apply to particular imports, with all of the classification difficulties that this would involve. The source of the criteria to be employed in resolving these problems would, moreover, necessarily be the foreign countries in which the restrictive decrees originated. Hence the purpose of the statute in providing for a single source within the United States for rates of exchange for customs purposes would be altogether frustrated.

For these reasons we think it should be held that the certification of only one rate is contemplated in Section 522 (c) with respect to a particular currency on a particular date.

II. THE "OFFICIAL" RATE FOR THE BRITISH POUND ON THE DATE IN QUESTION WAS LAWFULLY CERTIFIED BY THE BANK AND LAWFULLY USED IN ASSESSING THE DUTY UPON THE MERCHANDISE IN THIS CASE

The British official rate was the only rate at which, on May 3, 1940, pounds sterling could be purchased in New York City for unrestricted use. Pounds bought at that rate, if they had been obtained through authorized channels in the United Kingdom, could be used for any purpose,

[5] The procedure in appraising the value of imported goods and assessing duties upon them is set forth in the Monograph of the Attorney General's Committee on Administrative Procedure on Administration of the Customs Laws, Sen. Doc. No. 10, 77th Cong., 1st sess., Part 14, at pp. 33–57.

including payment for exported goods of all kinds. Pounds purchased at the "free" rate, on the other hand, could not be used to pay for the goods specified in Order in Council No. 291 of 1940 (R. 120–123). In view, therefore, of the dominant purpose of Section 522 (c) of the Tariff Act to bring about the establishment of a single value for each foreign currency, only the official rate could be used for customs purposes, since any other would not signify such a value and would fail to meet the basic requirement of the statute. The Federal Reserve Bank's certification of this rate, consequently, was in accordance with the statute, and this rate was lawfully used in assessing the duty upon petitioner's importation. The use of the "free" rate would not have been lawful.

The certification of the "free" rate by the Bank was properly disregarded by the Secretary of the Treasury and did not invalidate the correct certification which it accompanied. This Court inferentially held to this effect in *The Collector* v. *Richards*, 23 Wall. 246. In that case the Director of the Mint, pursuant to the Act of March 3, 1873, *supra*, p. 15 n. 3, certified, two values for the French franc to the Secretary of the Treasury, since he was uncertain which one truly represented the "value of the standard coins in circulation" which he was required to furnish. The one was the value of the standard franc as defined by

law; the other was the value of the actual gold content of francs in circulation as assayed at the mint, after they had been reduced in weight by abrasion. The Secretary, in a circular letter, designated the first value as the value to be used by collectors of customs in assessing duties. The issue in the case was whether a value fixed under the Act of 1873 or a value established by a previous Act of Congress should be used. Having decided favorably to the former view, the Court held that the value designated by the Secretary should be used, without any question growing out of the fact that its certification by the Director of the Mint had been accompanied by a certification of an alternative value. The Director of the Mint in effect made findings which submitted to the Secretary a question of law, relating to the proper value to be used. The Secretary decided the question and his decision was sustained by the Court. We contend that the situation in the present case is precisely analogous.

It is probably true as petitioner contends (Br. 28–29) that Section 522 (c) envisages primarily a rate of exchange which is established in an open market on the basis of transactions in that market. This was the typical rate in existence with respect to foreign currencies at the time the Tariff Act of 1930 and its predecessors were enacted. It was natural for Congress to legislate with reference to existing conditions. This does not

signify, however, that when those conditions change the statute requires continued reference to a market which has lost its significance. On the contrary, Section 522 (c) itself recognizes that there may not be a "market buying rate" and provides that in that event the Federal Reserve Bank of New York shall calculate "the buying rate," which is the ultimate fact to be determined, from "actual transactions and quotations in demand or time bills of exchange." The data to be used rest in the informed judgment of the Bank. There is nothing in the Act which requires that the "actual transactions and quotations in demand or time bills of exchange," to which the Bank may refer, must be wholly the result of bargaining. If a governmental decree, domestic or foreign, operates to fix the terms of actual transactions, the Bank is authorized to certify the rate employed, whatever its origins. The norm which Congress envisaged did not result in rigid legislation which could not be adapted to changing circumstances. The Federal Reserve Bank, therefore, proceeded lawfully in giving effect to its judgment that the official rate, which was evidenced by actual transactions, was a rate which it was authorized to certify. This is not questioned by petitioner.

There is no merit in petitioner's contention (Br. 25, 26–27, 30–32) that the "free" rate and the official rate upon the pound sterling were each

"tied up with certain classes or types of merchandise" and that, because the woolen goods involved in this case were paid for with pounds purchased at the "free" rate, this rate should be used in arriving at their value for customs purposes. The Federal Reserve Bank's certification (R. 130–131) contains no indication that such was the situation in the judgment of the Bank. There is no legal basis for contending that if there had been such an indication, it would have been binding upon the Secretary of the Treasury or the collector. The Bank was not empowered to determine what use should be made of the rates which it certified. Its function was solely one of fact determination. Section 522 (c) makes the value of a foreign currency depend upon a rate which the Bank certifies and not upon the class of merchandise which the currency may be used to purchase.

Section 522 (c) does not provide that the buying rate for a currency shall itself be used for customs purposes, but that the "value" of the currency, "measured by the buying rate", shall be used. When a currency is uncontrolled, its value in dollars and the buying rate are the same. When currency control, however, results in several buying rates upon the same currency, it is not the value of the currency which varies with the several rates but the price of the goods which may be purchased with currency ac-

quired at the various rates. The value of the currency is a fact to be ascertained from all available data and may or may not conform to one of the rates which prevails. To the extent that it is higher than a particular rate, the purchaser of currency at this rate, or the foreign exporter of the commodity for which the purchaser will make payment with the currency (depending upon the terms of the sale as affected by the rate in question and the uses to which the currency may be put in the country of origin) will receive an advantage, and the export of the particular commodity will be encouraged to the extent that someone may acquire the currency, not at its value, but for less. See *F. W. Woolworth Co.* v. *United States*, 28 C. C. P. A. (Customs) 239 (1940); 38 Op. Atty. Gen. 489. To say, therefore, that the same low rate must be used in assessing customs duties in this country would be both to controvert the statute, which directs that the value of the currency shall be used, and also to supplement a foreign government's encouragement of exports with a lowered tariff in this country.

There is likewise no basis in the record for any inference that in point of fact goods imported from the United Kingdom were purchased with pounds obtained at the "free" rate of exchange whenever the British decree permitted. Petitioner's assumption that this was done is unsupported by evidence. The Customs Court ex-

cluded testimony which might have established the extent to which there was actually a correlation between the possibility under the British decree of paying for imported goods with such pounds and the actual practice (R. 80–83). A member of the court, however, stated that "I think it is perfectly obvious" and that "we can take judicial notice of the fact" that pounds purchased at the official rate might have been used to pay for any type of importation from the United Kingdom. There is no showing that the supply of pounds purchasable at the "free" rate was always adequate to the needs of importers or that importers' London balances were not used. It has been recorded in a manner of which this Court may take judicial notice (see the use in *United States* v. *Whitridge*, 197 U. S. 135, 145, of "the facts which were known at the time") that "offerings of sterling in * * * free markets have been derived mainly from sterling assets held by nonresidents at the outbreak of the war in the form of banking funds, securities, and other investments; from sterling payments for certain imports by countries in the sterling control area; and from certain other types of current sterling income" and that "until March 1940 it was permissible to pay for nearly all British exports in free sterling, although it is not certain that this was always done." *Review of the Month*, 26 Federal Reserve Bulletin 383 (May 1940). Cer-

tainly in the light of this diagnosis it has not been established that free sterling was used in payment for imports from the United Kingdom to the full extent which was legally possible under the British Order in Council.

Even if it were true that all imports which the British decree permitted to be purchased with pounds obtained at the "free" rate were actually so purchased, it would not follow that the "free" rate should be used for customs purposes. An importer is not entitled to a reduction of duty because he has obtained his goods at a bargain, whether in the purchase price of the goods or in the rate of exchange at which he obtained the currency necessary to pay for them.[7] The law requires that "the value of imported merchandise shall be—(1) the foreign value or the export value, whichever is higher; * * *". Tariff Act of 1930, Section 402, 46 Stat. 708, 19 U. S. C. Sec. 1402 (*infra*, p. 43). "Foreign value" is defined as "the market value or the price at the time of exportation of * * * merchandise to the United States, at which such or similar merchandise is freely offered for sale for home consumption * * * in the ordinary

[7] Prior to the Tariff Act of July 14, 1832, 4 Stat. 583, duties were "estimated upon the basis of actual cost plus a stated percentage"; but in Section 7 of that Act (4 Stat. 591–592) "the law directed the ascertaining of actual value." Freund, *Administrative Powers over Persons and Property* (1928), p. 556.

course of trade * * *"; "export value" is defined as the value or price "at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported * * * for exportation to the United States". 19 U. S. C. Sec. 1402 (c), (d), *infra*, pp. 43–44.[7]

In view of the foregoing statutory provisions, there clearly is no legal connection between the amount or manner of payment for petitioner's importation of woolen goods and the ascertainment of the duty to be collected. The lack of logic or realism in petitioner's contrary contention is further evidenced by the fact that, whereas he claims the benefit of the free rate of exchange upon the pound as of May 3, 1940, the date of exportation, he actually paid for the goods with pounds purchased on May 22 at an entirely different rate. The rate which petitioner paid was $3.21 on a day for which the Federal Reserve Bank's certification, as of noon, was $3.227187 (R. 90; Br. 30–31), whereas the rate of which he now claims the benefit for customs purposes is $3.475138 (Br. 32). It thus appears that there is no connection, legal, logical, or factual, between the payment which petitioner made for the goods in question and the ascertainment of the proper duty upon them.

[7] It is the value of "such or similar merchandise," and not of the particular merchandise imported, which controls.

III. WHETHER OR NOT THE USE OF THE BRITISH "OFFICIAL" RATE WAS MANDATORY UNDER THE STATUTE, ITS DESIGNATION BY THE SECRETARY OF THE TREASURY AS THE RATE TO BE USED WAS VALID AND MAY NOT BE SET ASIDE BY A COURT

It was a fact, as the Federal Reserve Bank certified, that at noon on May 3, 1940 there were two different buying rates for the pound sterling in the New York market. Pounds could be purchased at either rate to pay for imported goods, although only one would purchase pounds that were usable for all types of goods. The Bank's certification was, therefore, in accord with the situation confronting it. Not one rate, but two, existed; if one alone was legally effective for customs purposes, as we have contended, the reasons lie in the statute. The Bank's certification of both rates necessarily left to others the determination of the uses to be made of them.

The Bank's certification confronted the Secretary of the Treasury with a condition in which no statutory buying rate, applicable to British currency for customs purposes, had as yet been determined, or in which, at best, his publication of the certification as made would have supplied the collectors of customs with two rates without guidance as to which one to use. He was necessarily required to meet this condition, since the Tariff Act still had to be administered. Petitioner argues that the Secretary had no authority

to select one of these rates and order its use; that he was required to publish whatever rates were certified to him; and that the selection of the proper rate should be left to the collectors of customs. We submit that the Secretary and not his subordinates has the power to select a rate and thus to make the difficult determination of the value of a foreign currency upon which there are several buying rates. Hence the Secretary acted properly and within his powers in determining that the "official" rate should be the only rate used for customs purposes, and his action may not be set aside or disregarded.[*]

His authority to issue T. D. 50134 of April 15, 1940, *infra*, pp 49–50, instructing collectors to use only the official rate in converting British pounds

[*] It might be argued that in the absence of a single buying rate in the New York market, certified by the Federal Reserve Bank, with which the proclaimed value of the metallic pound sterling may be compared, Section 522 of the Tariff Act requires that the latter value be used in estimating the dutiable value of goods imported from the United Kingdom. That value on May 3, 1940 was $8.2397 (R. 90). We do not make this contention, however, since the manifest purpose of the Act is to direct the use of the current buying rate for a foreign currency whenever that varies significantly from the value of the corresponding coin. The mode of ascertaining the fact of variance is subordinate to this purpose. The two rates of exchange which in fact prevailed with respect to the pound on the day in question, as appears from the record, whether or not either of these rates was entitled to recognition as the effective rate under Section 522, show clearly that the circumstance envisaged by the Congress had arisen. British currency had depreciated by more than 5 per centum. The dollar value of the gold pound was therefore excluded from use. Cf. *United States* v. *Whitridge*, 197 U. S. 135, 143.

into dollars for customs purposes, stems both from Section 522 (c) of the Tariff Act and from other statutory provisions which authorize him to issue regulations for the government of his department. The authority from both sources is clear and the finality with which it may be exercised is apparent.

Section 522 (c) does not require the Secretary to publish blindly whatever certification may be furnished to him by the Federal Reserve Bank. He is to make the information public "at such times and to such extent as he deems necessary." These words confer full discretion. They contrast with the language of Section 522 (a) with respect to the proclamation of the values of foreign coin, which requires that these values "shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly * * *."

Section 624 of the Tariff Act of 1930, 46 Stat. 759, 19 U. S. C. Sec. 1624, moreover, provides as follows:

> In addition to the specific powers conferred by this Act, the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

Section 502 (c) of the same Act, 46 Stat. 731, 19 U. S. C. Sec. 1502 (c) provides that:

> It shall be the duty of all officers of the customs to execute and carry into effect

> all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs.

It is provided in R. S. Sec. 249, 19 U. S. C. Sec. 3, that "The Secretary of the Treasury shall direct the superintendence of the collection of the duties on imports as he shall judge best." R. S. Sec. 248, 5 U. S. C. Sec. 242, provides that the Secretary "shall superintend the collection of the revenue."

R. S. Sec. 251, 19 U. S. C., Supp. III, Sec. 66, provides that:

> The Secretary of the Treasury shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations not inconsistent with law, to be used in carrying out the provisions of law relating to raising revenue from imports, or to duties on imports, or to warehousing, and shall give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law.

R. S. Sec. 161, 5 U. S. C. Sec. 22, reads as follows:

> The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his

> department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

The foregoing general provisions taken in conjunction with each other clearly confer upon the Secretary of the Treasury full authority to provide by regulations and instructions for the collection of customs duties, within the statutory framework. This authority has been conferred both in the Tariff Act itself and in the general legislation relating to government departments. It reinforces the discretion conferred by section 522 (c). As will appear from the authorities, its exercise is not subject to review in court except to determine the legality of the actions taken.

In the Tariff Act provision is made for judicial review of the legality of regulations which affect the amount of duty payable. Section 514, 19 U. S. C. Sec. 1514, provides that "decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties[9] chargeable * * * shall upon the expiration of 60 days * * * be final and conclusive upon all persons * * * unless the importer * * * shall, within sixty days

[9] In *United States* v. *Klingenberg*, 153 U. S. 93, it was held (pp. 101–102) that the rate of exchange employed in valuing imported goods for customs purposes enters into the determination of the amount of duties.

* * * file a protest in writing with the collector setting forth distinctly and specifically * * * the reasons for the objection thereto". The sections which follow (19 U. S. C., Secs. 1515–1517) provide for the determination and review of protests so filed, which may be carried to the Customs Court and the Court of Customs and Patent Appeals. It may be conceded that the review which follows upon a protest may extend to the legality of the orders and findings entering into the protested decision; but the extent of judicial reexamination of the determinations of the Secretary which may enter into his "orders and findings" is not specified. The scope of any such reexamination must necessarily be determined according to the nature and scope of the authority conferred upon the Secretary by the statutory provisions under which he acts.

Neither in Section 514 and the subsequent sections of the Tariff Act nor in Section 198 of the Judicial Code, 28 U. S. C. Sec. 310, *infra*, p. 46, governing appeals from the Customs Court to the Court of Customs and Patent Appeals, is provision made for inquiry into the factual and discretionary determinations of the Secretary of the Treasury entering into his formulation of regulations and instructions. It is clear that no such inquiry should be made, for the Secretary's powers were intended to be broadly discretionary and final, except in so far as he might exceed his

authority by transcending statutory or constitutional provisions.

We are not here dealing with the authority of an administrative officer, whether a member of the Cabinet or some other official, to take specified action of a legislative variety, in the form of a general regulation or otherwise, pursuant to precise statutory provisions, such as was involved in *Stark* v. *Wickard*, 321 U. S. 288; *Federal Security Administrator* v. *Quaker Oats Co.*, 318 U. S. 218; *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126; *United States* v. *Bush & Co.*, 310 U. S. 371, and other cases in this Court. The power involved in this case is the general supervisory power of the head of a department with respect to the functions of that department, coupled with the specific discretionary duty of publishing rates of exchange.

It is clear from the decisions that the administrative supervisory power may be exercised to the fullest extent without judicial interference and that affected private interests may not secure judgments invalidating or disregarding the actions taken, except in cases of clear illegality. *United States* v. *Bailey*, 9 Pet. 238; *Boske* v. *Comingore*, 177 U. S. 459; *Haas* v. *Henkel*, 216 U. S. 462; *Rosen* v. *United States*, 245 U. S. 467. In *Haas* v. *Henkel* and *Rosen* v. *United States* infringements of statutes, involving disregard of departmental regulations prescribed by virtue of the

general authority contained in Section 161 of the Revised Statutes, led to criminal liability—in the *Haas* case for conspiracy to defraud the United States and in the *Rosen* case for the theft of mail matter from a private mail box which had been designated as an authorized depository of mail by the Postmaster General. It seems clear that, if a criminal defendant may not have the benefit of a judicial inquiry into the merits of a regulation which results from an exercise of broad rule-making authority by the head of a department, the petitioner here is not in a position to demand a more searching review of the instruction of the Secretary of the Treasury to the collectors of customs; for, as this Court has noted, "No one has a legal right to the maintenance of an existing [tariff] rate or duty." *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 318.

In *Boske* v. *Comingore*, *supra*, the limitations upon judicial review of regulations prescribed pursuant to Section 161 of the Revised Statutes were stated as follows:

> * * * A regulation adopted under section 161 of the Revised Statutes should not be disregarded or annulled unless, in the judgment of the court, it is plainly and palpably inconsistent with law. Those who insist that such a regulation is invalid must make its invalidity so manifest that the court has no choice except to hold that the

> Secretary has exceeded his authority and employed means that are not at all appropriate to the end specified in the act of Congress.

Clearly the conduct of a large government department would be rendered vastly more difficult by any other rule. Section 514 of the Tariff Act, although it contemplates judicial review of regulations which enter into a collector's decisions, does not broaden the scope of this review beyond that which has been defined from the earliest times and recognized as the limit beyond which it would be inappropriate for the courts to go in relation to the type of function here involved.

Section 522 (c) of the Tariff Act does not limit the authority of the Secretary of the Treasury by subjecting his discretion to that of the Federal Reserve Bank. Petitioner is in error in asserting (Br. p. 24) that "the whole subject is confined by the law exclusively to the discretion of the Federal Reserve Bank * * *." The section, it is true, provides that in ascertaining the buying rate in the New York market the bank "may in its discretion" take into consideration various transactions and quotations. Discretion, however, is a word of many meanings. In this context it clearly signifies that the bank shall exercise skill and judgment in its choice of data upon which to rest a technical determination of fact.

Discretion in this sense has nothing to do with the choice of means or of limited ends, in terms of ultimate results to be achieved, such as is involved in the performance of other types of discretionary functions. The exercise of the latter type of discretion, in so far as it may become necessary in determining the use to be made of rates of foreign exchange, as well as in other aspects of administering the customs laws, rests with the Secretary of the Treasury by virtue of the language of Section 522 (c) and his general statutory authority.

The whole history of rates of exchange in relation to customs administration, and the decisions of this Court in relation to the problem, bear out this view. No decision has ever overturned or gone behind a proclamation of the Secretary, conveying the value of foreign coin as found by the Director of the Mint pursuant to statute. Attempts to substitute other, allegedly more appropriate, rates of conversion have uniformly met with failure. *Cramer* v. *Arthur*, 102 U. S. 612; *Hadden* v. *Merritt*, 115 U. S. 25; *United States* v. *Klingenberg*, 153 U. S. 93; *United States* v. *Whitridge*, 197 U. S. 135. In the *Cramer* case the same finality was extended to a consular certificate, made pursuant to statute, with respect to the extent of the depreciation of a foreign paper currency. In that case, also, the Court disregarded evidence of record, indicating that the

Secretary's proclamation of the value of the Austrian silver florin, which affected the case, had continued after that monetary unit had ceased to circulate or serve as a standard in Austria itself. "There must", said the Court, "be an end to controversy somewhere * * *. If the currency is a standard one, based on coin, the Secretary's proclamation fixes it; if it is a depreciated currency, the parties may have the benefit of a consular certificate. To go behind these and allow an examination by affidavits in every case would put the assessment of duties at sea. It would create utter confusion and uncertainty."

Applying these decisions, the Court of Customs and Patent Appeals adopted the view (R. 152) that the legality of the Secretary's instruction, like that of an earlier general order of the Secretary stating the value of the Indian rupee for customs purposes, was to be judged exclusively from the face of the order. *J. K. Clarke* v. *United States*, 17 C. C. P. A. (Customs) 420, T. D. 43,866 (1930). Without adopting so extreme a position here, in view of the wording of Section 514 of the Tariff Act, under which this proceeding arises, we nevertheless think it is clear from the Secretary's instruction of April 15, 1940 to collectors of customs (*infra*, pp. 49–50); from his publication of rates of exchange, dated May 11, 1940 (*infra*, pp. 50–51); and from the facts of record that nothing whatever entered into his determination that the

official British rate upon the pound should be used, which attaches the slightest taint of illegality to it.

The Secretary's action consisted essentially of publishing a fact found by the Federal Reserve Bank and certified to him; of a discretionary determination that this fact, rather than a different rate of exchange, should govern in the conversion of pounds to dollars for customs purposes; and of an instruction to collectors as to how they should perform a given function. Clearly the fact so published cannot be questioned, unless the Secretary usurped the function of the Bank, as certainly he did not. The discretionary determination of which rate to observe was for the Secretary alone to make, if the statute did not provide the answer. The instruction to collectors was expressly made binding upon them by Section 502 (c) of the Tariff Act, *supra*, pp. 31–32; and, since a regulation of a department head is involved, the instruction may properly be disregarded by a court only if "plainly and palpably inconsistent with law" (*Boske* v. *Comingore*, *supra*, p. 35).

The duty of determining the exchange rates on foreign currency, in so far as Section 522 (c) did not provide an alternative means, was cast upon the Secretary of the Treasury by Congress in the exercise of its constitutional powers, including the power to "regulate the Value * * * of foreign Coin" (Constitution, Art. I, Sec. 8,

cl. 5). The performance of this duty then became "an executive function, requiring skill and the exercise of judgment and discretion, which precludes judicial inquiry into the correctness of the decision * * *. The whole subject * * * [was] confided by law exclusively to the jurisdiction of the executive officers charged with the duty * * *." *Hadden* v. *Merritt, supra,* p. 38. Although the function of the Secretary here involved is different from that reposed in the President by the Tariff Act and involved in *United States* v. *Bush & Co., supra,* it is true here as there that, "for the judiciary to probe the reasoning which underlies" this action "would amount to a clear invasion of the legislative and executive domains." 310 U. S. at p. 380.

It is evident from the nature of both the economic and the administrative consequences of multiple rates of exchange that the discretion conferred upon the Secretary by Congress in the absence of a buying rate, found by the Federal Reserve Bank, which is binding upon him, must be preserved unimpaired if he is not to be prevented from dealing resourcefully with present conditions in international trade and exchange. If we are not sustained in our contention that the British official rate upon the pound was the rate required by the statute on May 3, 1940, then indubitably, we think, the Secretary's instruction established it as the only lawful rate to be used.

CONCLUSION

For the foregoing reasons we respectfully submit that the judgment of the Court of Customs and Patent Appeals should be affirmed.

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DECEMBER 1944.

APPENDIX A

STATUTES

Tariff Act of 1930, 46 Stat. 590, c. 497, as amended by the Act of June 25, 1938, 52 Stat. 19 U. S. C. Sec. 1001, et seq.:

SEC. 402. VALUE.

(a) *Basis.*—For the purposes of this Act the value of imported merchandise shall be—

(1) The foreign value or the export value, whichever is higher;

(2) If the appraiser determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value;

(3) If the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;

* * * * *

(c) FOREIGN VALUE.—The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale for home consumption to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all

other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(d) EXPORT VALUE.—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

* * * * *

SEC. 514. PROTEST AGAINST COLLECTOR'S DECISIONS.

Except as provided in subdivision (b) of section 516 of this Act (relating to protests by American manufacturers, producers, and wholesalers), all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs laws, and his liquidation or reliquidation of any entry, or refusal to pay any claim for drawback, or his refusal to reliquidate any entry for a clerical error

discovered within one year after the date of entry, or within sixty days after liquidation or reliquidation when such liquidation or reliquidation is made more than ten months after the date of entry, shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, as well in cases of merchandise entered in bond as for consumption, file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. * * *

SEC. 515. SAME.

Upon the filing of such protest the collector shall within ninety days thereafter review his decision, and may modify the same in whole or in part and thereafter remit or refund any duties, charge, or exaction found to have been assessed or collected in excess, or pay any drawback found due, of which notice shall be given as in the case of the original liquidation, and against which protest may be filed within the same time and in the same manner and under the same conditions as against the original liquidation or decision. If the collector shall, upon such review, affirm his original decision, or if a protest shall be filed against

his modification of any decision, and, in the case of merchandise entered for consumption, if all duties and charges shall be paid, then the collector shall forthwith transmit the entry and the accompanying papers, and all the exhibits connected therewith, to the United States Customs Court for due assignment and determination, as provided by law. Such determination shall be final and conclusive upon all persons, and the papers transmitted shall be returned, with the decision and judgment order thereon, to the collector, who shall take action accordingly, except in cases in which an appeal shall be filed in the United States Court of Customs and Patent Appeals within the time and in the manner provided by law.

(SEC. 522 is set forth *supra*, at pp. 2–4.) 28 U. S. C. Sec. 310 (Judicial Code, sec. 198):

Appeals from United States Customs Court.

If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the United States Customs Court as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said Court, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the Court of Customs and Patent Appeals for a review of the questions of law and fact involved in such decision. * * *

APPENDIX B

OFFICIAL COMMUNICATIONS AND REGULATIONS

Letter from Federal Reserve Bank of New York to the Secretary of the Treasury:

MARCH 19, 1940.

DEAR MR. SECRETARY: From advices which we have received from London, we understand that under the Defence (Finance) Regulation Amendment Order, 1939, of the Government of the United Kingdom, from and after March 25, 1940, exchange proceeds in designated currencies, including United States dollars, derived from specified exports from the United Kingdom to certain countries including the United States, the Philippine Islands and all territories under the sovereignty of the United States, must, in effect, be sold to authorized banks for surrender to the Bank of England at such rate of exchange as may be fixed from time to time by or on behalf of the British Treasury, or such exports must be paid for in pounds sterling purchased at such fixed rate of exchange with one of such designated currencies.

In view of the foregoing, we shall, commencing Monday, March 25, 1940, certify to the Secretary of the Treasury pursuant to the provisions of Section 522 of the Tariff Act of 1930, two rates for the pound sterling, one of which will be designated

"free," being the rate we are now certifying, and the other of which will be designated "official," being the rate fixed by or on behalf of the British Treasury, at present $4.03[illegible] United States currency per pound sterling.

Faithfully yours,

L. W. Knoke,
Vice President.

Certification of Rates of Exchange for May 1, 1940:

FEDERAL RESERVE BANK OF NEW YORK,

Date, May 1, 1940.

The Honorable the Secretary of the Treasury.

SIR: In pursuance of the provisions of Section 522 of the Tariff Act of 1930, dealing with the conversion of foreign currency for the purpose of the assessment and collection of duties upon merchandise imported into the United States, we have ascertained and hereby certify to you that the buying rates in the New York Market at noon today for cable transfers payable in the foreign currencies are as shown on the reverse side.

Respectfully,

For you B. J. [illegible]
Foreign Department.

Values of foreign currencies

(Value in U. S. Dollars)

Country	Monetary unit	Rates (buying rates for cable transfers in New York)
Europe		
* * *		
England	Pound Sterling	4.[illegible] (Official)
England	Pound Sterling	[illegible] (Free)
* * *		

Treasury Decision No. [illegible] (T. D. [illegible])

Treasury Dec. [illegible]

TREASURY DEPARTMENT, *April [illegible], 1940.*

To Collectors of Customs and Others Concerned:

Reference is made to the daily buying rates for foreign exchange which section 522 (c) of the Tariff Act of 1930 (U. S. C., title 31, sec. 372 (c)) directs the Federal Reserve Bank of New York to certify to the Secretary of the Treasury. The list of rates certified by the Federal Reserve Bank of New York has included two rates for the Canadian dollar and the Newfoundland dollar since March [illegible], 1940, two rates for the English pound since March [illegible], 1940, and two rates for the Australian pound since April 1, 1940. In each case the higher rate has been designated "official" and the other "free."

Whenever it is necessary to convert any of the above mentioned currencies into currency of the United States for the purpose of the assessment and collection of duties upon imported merchandise, collectors will make such conversion on the basis of the rate designated "official," unless the rate proclaimed for the respective currency pursuant to section 522 (a) of

the Tariff Act of 1930 (U. S. C. title 31, sec. 372 (a)) varies from such "official" rate by less than 5 per centum. In the latter event the proclaimed rate should be used.

Until further notice only the "official" rates for the named currencies will appear in the weekly issues and bound volumes of the TREASURY DECISIONS. The pertinent facts and circumstances will be kept under review and, should future developments make it advisable, further instructions will be given.

(342.211)

H. MORGENTHAU, JR.,
Secretary of the Treasury.

Treasury Decision No. 50146, 75 Treas. Dec. 388:

TREASURY DEPARTMENT,

OFFICE OF THE COMMISSIONER OF CUSTOMS

Washington D. C., May 11, 1940.

To Collectors of Customs and Others Concerned:

The appended table of the values of certain foreign currencies as certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 522 (c), Tariff Act of 1930, during the period from May 3 to 9, 1940, inclusive, is published for the information of collectors of customs and others concerned.

By direction of the Commissioner:

(342.211)

W. R. JOHNSON,
Deputy Commissioner of Customs.

Values of Foreign Currencies Certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under Provisions of Section 522 (c), Tariff Act of 1930

Period May 3 to 9, 1940, Inclusive

Country	Name of currency	May 3 dollars
Europe:		
England	Pound Sterling	[1] 4.035000

[1] (Official or Controlled.) • • • The rates for Canadian dollars, Newfoundland dollars, English pounds, and Australian pounds included in this list are for use pursuant to the directions in T. D. 50134.

U. S. GOVERNMENT PRINTING OFFICE : 1944